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Such were, in a general way, the higher functions of the Mexican council, and they appear, if we are permitted to characterize them to be only arbitrative and directive. Yet the members of that council had other duties of a purely judicial nature. 646 692

No conflict occurred between its jurisdiction and that of the kins. It was neither superior nor inferior to it, but wholly independent, even without any connection with it. Hence it extended:

1. Over the unattached class, the hangers-on to the tribe, or outcasts from the bond of kinship.[19]

2. Over all the people composing the tribe, irrespective of kinship, at places specially placed under tribal care, or reserved for tribal business, and therefore *neutral ground* for the members of all the calpulli. These neutral localities were the official buildings, the central or tribal "house of god," and especially the great "tianquiz" or market places.

The outcasts were, happily for the preservation of tribal society, not very numerous. Still, from their very origin, they were the most disorderly part of the people and crimes were certainly more common among them than among those upon whose passions the tie of kinship and the obligations resulting therefrom acted like a wholesome check. It required a judiciary power constantly on hand to repress and punish the misdemeanors committed among this class.

The "tecpan," the great central "teocalli" and the square on which it stood, and the market, were regular meeting-places of 348 621 693

elguiente, etc. . . . . ." (Cap. LX. p. 473): "Montezuma, apiadándose dellos, los mandó aposentar, y llamando su consejo, propu-soles la demanda que traian." *Codice Ramirez* (p. 61): "El Rey Itzcohuatl mostró gran contento con la embajada respondiendo con muy gratas palabras; mandó aposentar á los mensajeros, y honrarlos, y tratar como á su propia persona, diziéndoles que descansassen, que el dia siguiente les daria la re-puesta." See also *Torquemada* (Lib. XIV, cap I, p. 535): "Acabada la Embaxada, si el Embaxador no era de mui gran Principe, no se le respondia cosa, hasta otro Dia; salian con él algunos, acompañandole á la Calpixca, adonde se proveia de lo necesario, y en el entretanto el Señor comunicaba con los de su Consejo lo que se havia de responder, lo qual hacia uno de ellos, y no él." But the most complete picture of such delegations and the manner in which they were received is found in *Velascurt* ("*Teatro Mexicano*," Parte II°y Trat. IIa, cap. II. pp. 378 and 379). It is too long to be copied. I merely allude to the words: "Acabada la embajada, le volvian á la posada mientras se juntaban para la respuesta." It has been adopted by *Clavigero* (Lib. VII, cap. XI, pp. 470 and 471).

[19] The unattached class was under protection of no kin; therefore, if such a "bonded man" made his escape to the Tecpan, he became liberated from his bond. Already mentioned by *Gomara* ("*Conquista*," Vedia, I. p. 443), and subsequently confirmed by others.

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people from *all* the calpulli, but over which no single kin could exercise any control.[200] This control had been delegated to the

[200] In regard to the "teopan," the simple term "casa de comunidad," used particularly by *Torquemada* (Lib. VI, cap. XXIV, p. 46. and again Lib. XIII, cap. XXX, p. 477): la "Teopan, que es el palacio." explains much. It is, besides, self-evident that the tribal places of business and of worship were under the control of no particular kin, being expressly reserved for the tribe. There is, however, no definite expression as yet, in fact it hardly amounts to a clear conception, of the number and position or location of the original "tianquiz" of Tenochtitlan. There are four eye-witnesses of the conquest reporting upon the markets: Cortés, Andrés de Tapia, the anonymous conqueror, and Bernal-Diez de Castillo. I quote these in succession. *Cortés* ("*Carta Segunda*," Vedia, I, p. 92): "Tiene esta ciudad muchas plazas, donde hay continuos mercados y trato de comprar y vender. Tiene otra plaza tan grande como dos vezes la ciudad de Salamanca, toda cercada de portales al rededor, donde hay cotidianamente arriba de sesenta-mil animas comprando y vendiendo, . . ." "*Carta Tercera*," (p. 74): "hasta otra puente que está junto á la plaza de los principales aposentamientos de la ciudad." Note 2 of the Archbishop Lorenzana: "Antes de llegar á la plaza de la Universidad hay muchas puentes, y naturalmente habia aqui desta plaza ó mercado, que era muy grande." Id., (p. 76): "E porque este trabajo era incompartable, acordé de pasar el real al cabo de la calzada que va á dar al mercado de Temixtitan, que es una plaza harto mayor que la de Salamanca, y toda cercada de portales á la redonda;" (Id., p. 79): "seguimos nuestro camino, y entramos en la ciudad, á la cual llegados, yo reparti la gente desta manera: habia tres calles donde lo que teniamos ganado, que iban á dar al mercado, al cual los indios llaman Tianguizco, y á todo aquel sitio donne está llámam de Tlatelulco; y la una destas calles era la principal, que iba á dicho mercado, . . Las otras dos calles van donde la calle de Tacuba á dar al mercado." Id. (p. 81), after the repulse of the Spaniards: "todos los españoles vivos y muertos que tomaron los llevaron al Tatelulco, que es el mercado." Id. (p. 85): "E aquel dia acabamos de ganar toda la calle de Tacuba y de adobar los malos pasos della, en tal manera que los del real de Pedro de Albarado se podian communicar con nosotros por la ciudad, é por la calle principal, que iba al mercado, se ganaron otras dos puentes y se cegó bien el agua. . . ." Id., "y seguimos la calle grande, que iba á dar al mercado;" (p. 88): "Otro dia siguiente, estando aderezando para volver á entrar en la ciudad, á los nueve horas del dia vimos de nuestro real salir humo de dos torres muy altas que estaban en el Tatelulco ó mercado de la ciudad." *Andrés de Tapia* ("*Relacion*," etc., in *Col. de Doc.*, II, p. 562): mentions only the "patio de los idolos." "*El Conquistador anónimo*" (Col. de Doc., I. p. 396): "Sono nella città di Temestitan Messico grandissime et bellissime piazze, dove si vendono tutte le cose che usano fra loro, et specialmente la piazza maggiore che essi chiamano el Tatelula, che può esser così grande como sarebbe tre volte la piazza di Salamanca, et sono all'intorno di essa tutti portici; . ." (p. 394): "Et oltra q'uesta gran piazza ve ne sono dell'altre et mercati in che si vendono cose da mangiare in diverse parti della città." *Bernal Diez de Castillo* ("*Historia verdadera*," Vedia, II, cap. XCII, p. 89): "y cuando llegamos á la gran plaza, que se dice el Tatelulco, como no habiamos visto tal cosa, quedamos admirados de la multitud de gente y mercaderias que en ella habia, . ." He also states that the "gran plaza" was "cercado de portales." (Cap. CLII, p. 168): "que si nos parecia que fuesemos entrando de golpe en la ciudad hasta entrar y llegar al Tlatelulco, que es la plaza mayor Méjico, que es muy ancha, . . ." (Cap. CLV, p. 168): "que los entrásemos todo cuanto pudiésemos hasta llegarlos al Tlatelulco, que es la plaza mayor, adonde estaban sus altos cues y adoratorios." We notice at once a contradiction. Cortés first mentions a market of Tenochtitlan, and afterward he calls it of Tlatelulco. Archbishop Lorenzana identifies it with the "plaza de la Universidad," or in the neighborhood of the Cathedral. See *Carvantes-Saavedra* ("*Tres Dialogos*," p. 9): "en la esquina de las calles del Arzobispado y Seminario."

There were two great market-places in ancient Mexico, one of which was in Tenochtitlan, and the other in the conquered neighboring pueblo of Tlatelulco. This is very

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"tlatocan" as a consequence of the formation of the tribe. Crimes committed at such localities were punished with unusual severity, because they were offences desecrating *neutral* ground which was

plainly stated by *Torquemada* (Lib. XIV, cap. XIII, p. 553), and it would even appear as if, notwithstanding the importance attached to Tlatelulco by many authors, that the principal market was the one mentioned by this author as "el que está en la Poblacion de San Juan . . .," and consequently the proper "tianquiz" of the Mexican tribe. This could only be neutral ground, over which no single kin exercised any authority. It may have been different in regard to the "tianquiz" of Tlatelulco; at least the following indications of *Durán* (Cap. XXXIV, p. 270) deserve full attention: "Fecho esto mandó el rey que aquella plaça y mercado que ellos ganaron, pues los tlatelulcas no tenian mas tierra, que fuese repartido entre los señores y que la parte que á cada uno cupiese, que de todos los tlatelulcas que allí hiciesen asiento, de todo lo que vendiesen les diesen alcanala, de cinco uno, y así se repartió la plaça entre todos, de donde cada uno cobrava alcanala de lo que en el lugar que le avia cavido se vendia." The above is not quite definite enough, because the "plaza y mercado" of which the friar speaks, is evidently the one mentioned by him (p. 260): "y encerrándoles en la plaça de su mercado, haciéndose los tlatelulcas fuertes, no dexanan entrar á la plaça ninguno de los Mexicanos en ella," whereas he says (p. 270): "que allí hiciesen asiento," as if the place was built over. The fact that the "tianquiz" of Tlatelulco was "distributed among the Mexicans" is further asserted by *Tezozomoc* ("*Crónica Mexicana*," Cap. XLVI, p. 73, Kingsborough, Vol. 9): "Axayaca mandó tambien se hiciese repartimiento del tianquiz de Tlatilolco á los Mexicanos, y comenzaron á medir primera suerte Axayaca, luego á Zihuacoatl Tlacaelel-tzin, luego par su orden Tlacochcalcatl, y á todos los capitanes, que fué tenido el tianquiz en mas de sí ganaron ellos pueblos." It would therefore appear, if we interpret this "distribution" as it should be done, namely: *as a division of spoils among the kins*, that the latter claimed a share of tribute from the traffic or barter going on in the "tianquiz" of Tlatelulco, a fact corroborated besides by that other statement of *Durán* (p. 260): "El rey le mandó, que pues aulan sido traidores á su corona real, que de allí adelante queria y era su voluntad que aquella parcialidad Mexicana del tlatelulco le fuesen tributarios y pecheros como las demas ciudades y provincias, . . ." This, and the uncertainty as to which tianquiz is always meant, favors the assumption that *Gomara* ("*Conquista*," p. 349. Vedia I) mentions Tlatelulco when he says: "Los que venden pagan algo del asiento al *Rey*, ó por alcabala ó porque los guarden de ladrones." *Cortés* ("*Carta Segunda*," pp. 32, 33 and 34) does not mention it, for the words: "donde están personas por guardas y que reciben certum quid de cada cosa que entra" do not apply to the market which he describes as having visited and which, in spite of *Bernal-Díaz* ("*Hist. Verdadera*," Cap. XCII, p. 89) I still believe to have been that of Tenuchtitlan, and *not* that of Tlatelulco. Cortés is strictly followed by *Oviedo* (Lib. XXXIII, cap. X, pp. 300 and 301) whereas *Herrera* (Dec. II, lib. VII, cap. XVI, p. 195) copies Gomara.

I have dwelt thus long on this question because it disposes of the notion that the "government" of Mexico levied a tax on the traffic of the members of the tribe. This tax limits itself to a tribute paid by the subjected tribe of Tlatelulco alone, because, as *Durán* says (p. 270) "they had no more soil than that of their tianquiz." This tax was distributed among the kins, like any other tribute. But it does not follow that therefore the kins exercised judicial power over the Tlatelulcan market. This power either remained with the Tlatelulcan tribe, or devolved upon the officers of the tribe of Tenuchtitlan. The former is more likely, although the latter might also have been the case since the Tlatelulcans were treated with great severity, as traitors and outcasts (*Durán*, Cap. XXXIV, pp. 269-271), in which case the tribal authorities would have had to punish them.

That the central or tribal "tecalli" and the courts surrounding it were committed to the care of the tribe, as representing all the kins, on equal terms, in the share which each had in it, is self-evident, and needs no further proof.

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368 621 693 then respected as open to use for all the kins in common.[201] So many people met there daily, that the daily exercise, at least the presence, of judicial authority was absolutely necessary.[202]

[201] *Las Casas* ("*Historia apologética*," Cap. 214, in note XLV of Lord Kingsborough, Vol. VIII, p. 134): "pero cuándo reñian en los mercados, como á escandalosos y alborotadores del pueblo eran muy gravemente castigados." *Sahagun* (Lib. VIII, cap. XXXVI, p. 335) says even of those who disposed of stolen articles: "the Judges and chiefs took them and sentenced them to death." *Torquemada* (Lib. XII, cap. V, p. 581): "El que hurtaba en la Plaça ó Mercado, que llaman Tianquizco, luego allí era muerto á palos, por tener por muy grave culpa, que en semejante lugar, y tan publico, huviese tanto atrevimiento." *Clavigero* (Lib. VII, cap. XVII, p. 384): "He who changed the measures established by the government, in open market, was executed on the spot," and (p. 387): "He who stole in the market, was at once beaten to death." *Mendieta* (Lib. II, cap. XXIX, p. 136): "Porque tenian por grave el pecado cometido en la plaza ó mercado."

[202] We have again here the eye-witnesses. *Cortés* ("*Carta Segunda*," Vedia, I, p. 82): "Hay en esta gran plaza una muy buena casa como de audiencia, donde están siempre sentados diez ó doce personas, que son jueces y libran todos los casos y cosas que en el dicho mercado acaecen, y mandan castigar los delinquéntes. Hay en la dicha plaza otras personas que andan continuo entre la gente mirando lo que se vende y las medidas con que miden lo que venden, y se ha visto quebrar alguna que estaba falsa." *Bernal Diez de Castillo* (Cap. XCII, p. 89): Vedia, II, "y tenian allí sus casas, donde jugaban tres jueces y otros como alguaciles ejecutores que miraban las mercaderías." These two statements, with more or less variation, are at the base of all that has been subsequently said on this subject, except by *Sahagun* (Lib. VIII, cap. XXXVI, p. 325): "El señor tambien cuidaba del tianguiz y de todas las cosas que en el se vendian por amor de la gente popular, y de toda la gente forastera que allí venia, para que nadie los hiciese fraude, ni sin razon en el comercio de la feria. Por esta causa ponian por órden todas las cosas, que se vendian cada una en un lugar, y elegian por la misma oficiales que se llamaban tianquizpantlayacaque, los cuales tenian cargo del mercado, y todas las cosas que allí se vendian de cada género de mantenimientos ó mercaderías; tenia uno de estos cargo para poner los precios de las cosas que se vendian y para que no huviese fraude entre los compradores y vendedores." "Tianquizpantlayacaque" decomposes into "Tianquizpan," "feriar, o tratar en mercado," *Molina* (II, p. 114), and "Tlayacatia," "cosa primera o delantera" (Id., p. 120); consequently, "the foremost or first ones of those who trade in open market." We have to discriminate therefore between these and such officers as "*sui*" ("están siempre sentados," says Cortés) within that "very good house" in the market, or rather close by, and acted as Judges. *Herrera* (Dec. II, Lib. VII, cap. XVI, p. 196) says this house was "cerca del Mercado"—a statement which he afterwards changes to "en la plaza de Mexico" (Dec. III, Lib. IV, cap. XVII, p. 137). We are now informed by *Torquemada* (Lib. XIV, cap. XIII, p. 665) that the *tecpan* of Tlatelulco "que son las Casas de Cabildo, y Audiencia" was, at his time, on one of the sides ("acera") of the *market* of Tlatelulco, and it appears to have been customary for the natives to have the official building facing the "tianquiz." Such was the case at Texcoco if we are to believe *Ixtlilxochitl* ("*Hist. des Chichimèques*," Cap. XXXVI, p. 347): "Le palais avait deux cours, dont la première, qui était la plus grande, servait de place publique et de marché; elle est même encore aujourd'hui destinée à cet usage;" and if the market of Tenochtitlán really was where Archbishop Lorenzana places it (see note 200), then it is evident that the Mexican tecpan must have been very near it, if not actually facing the square. The "great house" mentioned by the eye-witnesses quoted, was therefore, in all probability, but the council or official-house of the tribe, and the old men who, in number from three to twelve, are said to have officiated as "Judges," were members of the "tlatocan" or supreme council on judicial duty, as we shall hereafter see. Those officers who circulated among the people maintaining peace and order, were executive

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It therefore demanded the daily attendance at the official house of the tribe of a body of men sitting as "judges." The decisions of these judges had to be final even in matters of life and death. Therefore the chiefs composing the highest authority of the tribe, the members of the council or "tlatoca," were also its supreme judges. It is stated that for this daily work the twenty "speakers" were subdivided into two bodies sitting simultaneously in two different halls of the "tecpan." One of these bodies is called "court of the nobles" because it attended, not merely to tribal cases, but especially to the preparatory business of government in general, whereas the other limited its decrees to judicial questions only.[303]

officers delegated for that special purpose, and, as we shall find, probably under orders of the military commanders of the tribe.

[303] This division of the council into two bodies for the purpose of greater dispatch of judicial work is particularly affirmed by *Sahagun* (Lib VIII, cap. XIV, p. 305, Cap. XV, p. 304, and Cap. XXV, pp. 313 and 314), who, however, contradicts himself in regard to the position and rank of his "Judges." Thus (p. 303) he calls his officers of the "sala de la judicatura," "el rey, los señores, cónsules, oidores, principales nobles" as distinguished from those of the "audiencia de la causas civiles," whom he designates as "los senadores y los ancianos," thus intimating, if not asserting, that the former were superior to the latter in rank and power. The hall wherein the former met, is called "tlacxitlan," the latter "teccalli." I shall return to these terms again. He further asserts (p. 314), speaking of the former: "Estos tales eran los mayores jueces, que ellos llamaban tecutlatoques." and establishes them as a court of appeal for the lower court. Now (Cap. XXX, p. 318) he says: "juntábanse los senadores que llamaban tecutlatoques . . ." Consequently, he tacitly admits that the "senadores" who, according to him, composed the "lower" court were also the *equals* of those of the higher, and all belonged to the same class of officers. Finally, his picture of the duties of both bodies is rather obscure. He even (p. 314) might be construed so as to establish *three* courts. If we now examine the names given by him, we find that of the "lower" to be "house of chiefs," from "tecuhtli" and "calli," house. Indeed, *Molina* (II, p. 93) has "teccalli," "casa, o audiencia real." "Tlacxitlan," however, signifies (II, p. 120) "en lo baxo, o al pie de los arboles, o de cosa semejante." The proper derivation, however, is from "ni tlacxitoca" "to correct writings, or count over what has been already counted" (p. 120), which would indeed correspond to a "court of appeals." "To appeal" is "nitlacuepa;" "appeal," "tlacuepaliztli; occeecan neteihuiliztli," *Molina* (I, p. 12). It stands properly for the act of demurring, or of returning, folding, doubling up, and it is not likely to have been used by the natives to define an appeal in our sense of the word. Father Sahagun has probably introduced the word "tlacxitlan" himself. At all events, he is responsible for the notion of a superior body of judges, to whom a lower court, sitting in the same house, referred all cases of importance, contenting itself with taking testimony and despatching unimportant cases; while at the same time he tells us that the members of *both* groups *held the same office*, and were consequently equal and had the same title. This title we have found to be that of the members of the council, consequently the two groups formed but fractions of that body, co-ordinated and assisting each other, and not a higher and a lower branch of a tribal judiciary.

Father Sahagun and contemporary authors of the Franciscan school, whose writings have just now come to light in the "*Libro de Oro*," can easily be traced as the source of most of the later pictures of Mexican judicial customs as in the present instance. Thus his highest tribunal of *thirteen* "senadores" reappears in *Gomara* ("*Conquista*," p. 443,